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# OPEN MEETING ITEM



JODI JERICH  
Executive Director

## ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

2014 MAR 25 AM 9 08

DATE: MARCH 25, 2014

DOCKET NO.: RR-03639A-13-0440

ORIGINAL

### TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Scott M. Hesla. The recommendation has been filed in the form of an Opinion and Order on:

### UNION PACIFIC RAILROAD COMPANY (UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 3, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 8, 2014 AND APRIL 9, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

MAR 25 2014

DOCKETED BY

*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF  
9 THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO UPGRADE AN  
11 EXISTING CROSSING OF THE UNION PACIFIC  
12 RAILROAD COMPANY AT UNIVERSITY DRIVE  
13 IN THE CITY OF TEMPE, MARICOPA COUNTY,  
14 ARIZONA, AAR/DOT NO. 741-560C.

DOCKET NO. RR-03639A-13-0440

DECISION NO. \_\_\_\_\_

15 **OPINION AND ORDER**

11 DATE OF HEARING:

March 13, 2014

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Scott M. Hesla

14 APPEARANCES:

Mr. Joe Acosta, Jr., Assistant Attorney General,  
Transportation Section, on behalf of the Arizona  
Department of Transportation;

Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll &  
Schwartz, P.C., on behalf of the Union Pacific Railroad  
Company; and

Mr. Charles Hains, Staff Attorney, Legal Division on  
behalf of the Safety Division of the Arizona Corporation  
Commission

19 **BY THE COMMISSION:**

20 \* \* \* \* \*

21  
22 Having considered the entire record herein and being fully advised in the premises, the  
23 Commission finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 **Procedural History**

26 1. On December 13, 2013, the Arizona Department of Transportation ("ADOT") filed  
27 with the Arizona Corporation Commission ("Commission") an application for approval for the Union  
28 Pacific Railroad Company ("Railroad") to upgrade an existing crossing at University Drive in the

1 City of Tempe ("City"), Maricopa County, Arizona at USDOT No. 741-560C ("Application").  
2 ADOT is seeking Commission approval to upgrade the existing at-grade crossing.

3 2. On December 19, 2013, a Procedural Order was issued establishing various filing  
4 dates and scheduling a hearing for March 13, 2014.

5 3. On February 24, 2014, the Commission's Safety Division, Railroad Safety Section  
6 ("Staff") filed a Staff Memorandum recommending approval of the application.

7 4. On March 6, 2014, ADOT filed documentation that it had provided public notice of  
8 the Application and hearing thereon.

9 5. On March 13, 2014, a full public hearing was convened, as scheduled. ADOT, the  
10 Railroad, and Staff appeared through counsel. At the conclusion of the hearing, the matter was taken  
11 under advisement pending submission of a Recommended Opinion and Order to the Commission.

12 6. On March 21, 2014, a letter from the United States Department of Transportation  
13 Federal Highway Administration ("FHWA") was filed in this docket. The FHWA letter, dated  
14 March 19, 2014, approves ADOT's request for an extension of time for federal reimbursement on  
15 preliminary engineering work performed at the University Drive crossing.

16 **ADOT's Application**

17 7. Prior to the filing of the Application, representatives of ADOT, the City, the Railroad  
18 and Staff participated in several diagnostic review meetings of the proposed upgrades for the  
19 crossing. All parties who were present at these meetings were in agreement that the proposed  
20 enhancements would improve safety at the crossing.

21 8. In its Application, ADOT is seeking Commission approval to upgrade the existing at-  
22 grade crossing at University Drive, a five lane paved roadway, which consists of two eastbound and  
23 two westbound through lanes with a center two-way left hand turning lane. The proposed  
24 improvements will replace the existing flashing lights and gates with two new automatic gates with  
25 LED flashing lights on the outside curbs of University Drive and two new automatic gates with LED  
26 flashing lights which will be located on a new raised median. Additionally, constant warning time  
27 circuitry will also be installed. The City is constructing the raised median, adjusting sidewalks, and  
28 restriping the roadway in advance of the crossing.

1           9.     The proposed upgrade of the University Drive crossing was approved by the  
2 Commission in Decision No. 64988 (June 26, 2002) as part of the 2002 Annual Array to utilize  
3 federal funding pursuant to 23 U.S.C. § 130 ("Section 130"). Section 130 projects are used to  
4 eliminate hazards to pedestrians and highway vehicles at public railroad crossings which are not  
5 primarily for the benefit of the Railroad.

6           10.    Mr. Jason Pike, ADOT's Railroad Coordinator for Section 130 projects, testified in  
7 support of the Application.

8           11.    Mr. Pike testified that the project will be funded entirely by the FHWA. (Tr. 11:4-7).  
9 Mr. Pike indicated that, as with any federal project, construction must commence within 10 years  
10 from the time a project is placed on an Annual Array in order to obtain Section 130 funding. (Tr.  
11 8:19-9:3).

12          12.    According to the FHWA's March 19, 2014 letter, ADOT was granted an extension of  
13 time to commence construction and the project has been fully authorized by the FHWA. Mr. Pike  
14 testified that, under the extension, the Commission must approve the project no later than May 31,  
15 2014. (Tr. 9:12-18).

16          13.    Mr. Pike testified that construction on the project is expected to begin in October of  
17 2014 and will take approximately six months to complete. (Tr. 11:12-18).

18          14.    Testifying further, Mr. Pike stated that the proposed upgrade to the University Drive  
19 crossing is in the public interest. (Tr. 9:19-22).

20          15.    Mr. Brian Lehman, Supervisor of Railroad Safety for the Commission, testified that  
21 he had prepared the Staff Memorandum which describes the nature of ADOT's proposed upgrade at  
22 the University Drive crossing. (Tr. 14:6-9).

23          16.    Mr. Lehman indicated that he was aware of two accidents at the University Drive  
24 crossing, occurring in 2005 and 2013. (Tr. 15:4-18). According to Mr. Lehman, both accidents  
25 involved vehicles driving around the closed gates. (Tr. 15:4-18). Both Mr. Pike and Mr. Lehman  
26 testified that the raised median will discourage people from driving around the automatic gates. (Tr.  
27 10:8-21 and Tr. 15:19-16:1).

28    ...

17. Mr. Lehman testified that the improvements being made to the University Drive crossing are consistent with similar crossings located throughout Arizona. (Tr. 17:6-8).

18. Mr. Lehman further testified that the upgrade of the University Drive crossing will result in a safer crossing and be in the public interest. (Tr. 17:3-5).

19. According to the Staff Memorandum, construction of a grade separated crossing is not warranted due to its proximity to the Arizona State University campus and the overall high cost to construct a grade separated crossing.

20. In its Staff Memorandum, Staff states that it does not recommend closing the crossing. According to Staff, crossing closure would cause considerable traffic difficulties and would have a negative impact on adjacent businesses.

21. Staff recommends that the Application be approved.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The installation of the crossing upgrade is necessary for the public's convenience and safety.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as recommended by Staff.

5. After the installation of the improvements at the University Drive crossing, the Union Pacific Railroad Company should maintain the crossing in accordance with A.A.C. R14-5-104.

## ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the crossing upgrade as described in the Application within fifteen months of the effective date of this Decision.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the Commission, in writing, within ten days of both the commencement and completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad Company shall maintain the crossing in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
SMH:tv

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.:

RR-03639-13-0440

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